

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1995 SESSION

<p><b>FILED</b></p> <p>January 26, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p><b>LARRY GILBREATH,</b>  Appellant,  V.  <b>RICKY BELL, WARDEN,</b>  Appellee.</p>	<p>) ) C.C.A. No. 01C01-9506-CC-00171 ) ) Hickman County ) ) Hon. Donald P. Harris, Judge ) ) (Habeas Corpus) ) )</p>
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FOR THE APPELLANT:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

**OPINION**

Appellant, Larry Gilbreath, was convicted of rape on April 19, 1971. He was sentenced to serve 55 years and 1 day confinement. Appellant filed Application for Writ of Habeas Corpus alleging that his sentence "expired on January 4, 1993." The trial court dismissed without conducting an evidentiary hearing. The trial court held that appellant must serve one-half of his determinate sentence prior to being considered for paroled release. The court reasoned that good and honor time credit was inapplicable when calculating parole eligibility on determinate sentences. McFadden v. State, 532 S.W.2d 944, 946 (Tenn. Crim. App. 1975). The trial court further found neither a factual nor legal basis supporting appellant's assertion that his sentence had expired.

On appeal, the appellant argues that pursuant to credits provided by Tenn. Code Ann. §§ 41-332 & -334, his sentence expired on January 4, 1991. He argues that the issue is not his parole eligibility date, but whether his sentence has expired. We understand appellant's allegations, however, we find no error of law requiring reversal. Pursuant to Tenn. R. Ct. Crim. App., Rule 20, we affirm the trial court's findings.

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PAUL G. SUMMERS, Judge

CONCUR:

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JOE B. JONES, Presiding Judge

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JOSEPH M. TIPTON, Judge